

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Diana Townsend	Team: Squad #7	CCRB Case #: 201406458	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 06/23/2014 4:15 AM	Location of Incident: in front of 985 Morris Avenue	Precinct: 44	18 Mo. SOL 12/23/2015	EO SOL 12/23/2015	
Date/Time CV Reported Mon, 06/23/2014 6:09 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/27/2014 3:05 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Richard Blasetti	12933	948678	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Bauta	27270	938040	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Richard Blasetti	Force: PO Richard Blasetti struck § 87(2)(b) with a baton.	

### Case Summary

On June 23, 2014, at approximately 4:15 a.m., § 87(2)(b) § 87(2)(b) and his friends, § 87(2)(b) § 87(2)(b) and § 87(2)(b) were ejected from the Bamboo Lounge, located at 985 Morris Avenue in the Bronx, by security guards. § 87(2)(b) § 87(2)(b) encountered PO Michael Bauta and PO Richard Blasetti outside of the lounge and they engaged in an argument. § 87(2)(b) § 87(2)(b) ran from the scene and PO Bauta and PO Blasetti chased him. § 87(2)(b) § 87(2)(b) alleged that both officers repeatedly struck him on his arm and the back of his head with a baton (**Allegation A**).

§ 87(2)(b) § 87(2)(b) was arrested for assaulting a police officer, resisting arrest, obstructing governmental administration and harassment (encl. 24a-24c). § 87(2)(b) § 87(2)(b) was treated at § 87(2)(b) where he was diagnosed with two lacerations to the back of his head, one of which required eight staples and one of which required five staples (see enclosed folder).

This case was initially assigned to Inv. Krista Kano. Upon her departure from the agency, the case was reassigned to Assistant Supervisor of Investigations Diana Murray on March 2, 2015.

### Mediation and Criminal Histories

This case was not eligible for mediation. § 87(2)(b) § 87(2)(b) has not pled guilty to any charges stemming from this incident and his criminal case is still open § 87(2)(b) § 87(2)(c)

§ 87(2)(b) § 87(2)(c)

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### Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) § 87(2)(b) (encl. 6a).
- PO Blasetti has been a member of the service for four years and this is the first physical force allegation made against him. Since this complaint was filed, a second physical force allegation was made against PO Blasetti in CCRB case 201411931, which is currently under investigation (encl. 5a). In CCRB case 201200442 a discourteous language allegation was substantiated against PO Blasetti and the CCRB recommended charges. A negotiation took place and in August 2014, he NYPD declined to issue PO Blasetti any penalty.

### Civilian Statements

#### § 87(2)(b) § 87(2)(b) Victim (encl. 10a -10p)

§ 87(2)(b) § 87(2)(b) was interviewed by IAB directly after this incident. He was interviewed by the CCRB on August 19, 2014.

- Prior to running from the location, § 87(2)(b) § 87(2)(b) alleged that, unprovoked, PO Bauta brandished his baton and swung it toward § 87(2)(b) § 87(2)(b) face. § 87(2)(b) § 87(2)(b) blocked his face with his arm and PO Bauta's baton made contact with § 87(2)(b) § 87(2)(b) arm instead.
- In his IAB interview he acknowledged "grappling" with an officer prior to running away.
- § 87(2)(b) § 87(2)(b) ran into the street and PO Bauta and PO Blasetti chased after him. From behind, both officers hit him on the back of his head with their batons. He was unable to approximate how many times he was struck in his CCRB interview. § 87(2)(b) § 87(2)(b) informed IAB officers he was struck six times.
- § 87(2)(b) § 87(2)(b) informed IAB officers that he had a lot to drink before the incident.

§ 87(2)(b) **Witness (encl. 12a)**

IAB Officers interviewed § 87(2)(b)

- Outside of the lounge, an officer tried to grab § 87(2)(b) and § 87(2)(b) ran. § 87(2)(b) did not see § 87(2)(b) punch an officer at any point and was unaware of any preceding argument.
- One officer who § 87(2)(b) could not describe removed his baton and struck § 87(2)(b) approximately seven to ten times on his arms and head while running behind him.
- A white male officer tackled § 87(2)(b) and § 87(2)(b) landed face-first on the street.

§ 87(2)(b) **Witness (encl. 13a).**

IAB officers interviewed § 87(2)(b)

- § 87(2)(b) was removed from the lounge because he was unruly, intoxicated, and was attempting to fight people. Once outside, § 87(2)(b) and another man were saying “fuck the police.” In response, PO Bauta and PO Blasetti got “all hyped up” and each pushed § 87(2)(b) one time. § 87(2)(b) swung at an officer, missed, and then ran away.
- The officers caught up with § 87(2)(b) and § 87(2)(b) punched PO Blasetti in the chest. PO Blasetti then struck § 87(2)(b) in an unknown location with his baton. § 87(2)(b) ran away again.
- PO Bauta tackled § 87(2)(b) to the ground and it appeared as if PO Bauta sustained a leg injury at this point.
- Both PO Blasetti and PO Bauta struck § 87(2)(b) on his body and head five to seven times with their batons. He specifically observed PO Blasetti strike § 87(2)(b) in the head with a baton. § 87(2)(b) believed this was how § 87(2)(b) sustained a head injury. As he was being struck with the baton, § 87(2)(b) was not resisting arrest, but he did use his hand and arms to protect his head and body from the baton strikes.

§ 87(2)(b) **Witness (encl. 14a).**

- § 87(2)(b) described § 87(2)(b) as extremely intoxicated.
- § 87(2)(b) identified PO Bauta by first and last name.
- After being kicked out of the lounge, § 87(2)(b) was yelling that he was a gang member and stating, “Fuck the police, fuck this, fuck that.” § 87(2)(b) then initiated physical contact with officers by pushing PO Bauta.
- PO Bauta and PO Blasetti attempted to control § 87(2)(b) but § 87(2)(b) started swinging at officers and then ran into the street. When PO Bauta caught up with him, § 87(2)(b) swung his fists and kicked his legs at PO Bauta.
- PO Bauta tackled § 87(2)(b) into a wall and they both hit the wall hard. This is how § 87(2)(b) believed that § 87(2)(b) sustained his head injury.
- PO Bauta struck § 87(2)(b) on the legs with his baton, but § 87(2)(b) did not see PO Bauta hit him in the head with a baton.

**Additional Witnesses**

The § 87(2)(b), § 87(2)(b) was interviewed by IAB but did not provide salient information relevant to the allegations (encl. 15a). Between August 19, 2014 and September 26, 2014, § 87(2)(b) and § 87(2)(b) were contacted multiple times, but they were unavailable to the investigation (encl. 34a-34o, 35a-35e, 36a-36p). § 87(2)(b) could not provide contact information for § 87(2)(b) and his contact information was not revealed during various database searches. A search of the New York Department of Correction website concluded that § 87(2)(b) and § 87(2)(b) were not incarcerated.

## NYPD Statements

### Subject Officer: PO RICHARD BLASETTI (encl. 21c-21d)

- PO Blasetti observed bouncers physically removing § 87(2)(b) from the bar.
- § 87(2)(b) stated to PO Blasetti, “I’m in the Trinitarios (a known gang). I can’t wait to kill some cops.” § 87(2)(b) clenched his fists and looked at PO Blasetti before saying, “I’m gonna kill you.” § 87(2)(b) got within inches of PO Blasetti’s face and wound his fist back as if to swing at PO Blasetti. PO Blasetti pushed § 87(2)(b) on his shoulders in an attempt to create space between them. § 87(2)(b) took another step toward PO Blasetti and pushed him, which prompted PO Bauta to push § 87(2)(b).
- The crowd closed in on PO Blasetti and hit him on his head and back while he was trying to affect § 87(2)(b) arrest.
- PO Blasetti removed his baton and held it in the air. § 87(2)(b) then punched PO Blasetti in the face.
- PO Blasetti subsequently struck § 87(2)(b) on his arms with the baton, but he never struck him in the head. As § 87(2)(b) was being struck with PO Blasetti’s baton, he kept throwing punches.
- PO Blasetti never observed PO Bauta remove or use his baton.
- § 87(2)(b) ran away, and when he was cornered by officers, he punched PO Bauta in the face. He then ran away again and was tackled by PO Bauta; however, PO Blasetti did not see how § 87(2)(b) landed on the ground.
- PO Blasetti was presented with photos of § 87(2)(b) head injury (encl. 10f, 10k) but was unable to say how they were sustained.

### Witness Officer: PO MICHAEL BAUTA (encl. 18c)

- PO Bauta observed § 87(2)(b) throw punches at the bouncers and push them.
- § 87(2)(b) was screaming “Fuck the cops, I’ll kill them. I don’t give a fuck about the cops.” As he was making these statements, § 87(2)(b) was standing six inches to one foot from PO Bauta’s face. PO Bauta stated that § 87(2)(b) was close enough to grab his firearm, but he never reached for his firearm. PO Bauta pushed § 87(2)(b) in the chest. Immediately thereafter, § 87(2)(b) punched PO Bauta on his ear and other areas he does not recall, numerous times.
- PO Bauta punched § 87(2)(b) on his ear, face head and body.
- PO Bauta observed PO Blasetti hit § 87(2)(b) on his leg with his baton.
- PO Bauta tackled § 87(2)(b) but did not see him hit his head on the ground.
- PO Bauta denied ever removing his baton or using his baton against § 87(2)(b).

## Findings and Recommendations

### Allegations Not Pleaded on § 87(2)(b)’s Behalf

- **Baton Force:** § 87(2)(b) stated that he spoke to § 87(2)(b) after this incident and § 87(2)(b) informed him that he too had been struck by the officers’ batons. § 87(2)(b) did not see this occur firsthand. When § 87(2)(b) was interviewed by IAB he did not make these allegations on his own behalf and he was unavailable to the CCRB investigation (encl. 12a). § 87(2)(g)

### Allegations Not Pleaded on § 87(2)(b)’s Behalf

- **Physical Force:** § 87(2)(b) did not allege that he was punched by an officer and many of the witnesses did not report seeing an officer punch § 87(2)(b). However, PO Bauta stated that he

punched § 87(2)(b) on his ear, face, head and body. § 87(2)(g)

### **Explanation of Subject Officer Identification**

§ 87(2)(b) stated that, although his back was to the officers, he knew that both officers hit him with batons. PO Blasetti acknowledged striking § 87(2)(b) with a baton, though he denied striking him in the head, and he contended that he was the only officer to remove his baton. PO Bauta confirmed that PO Blasetti struck § 87(2)(b) with a baton, but denied using his own baton. § 87(2)(b) saw one officer strike § 87(2)(b) with a baton, but he was unable to describe this officer or differentiate between PO Bauta and PO Blasetti. § 87(2)(b) observed both officers strike § 87(2)(b) with a baton, whereas § 87(2)(b) believed that PO Bauta used the baton. The video footage did not capture this portion of the incident and was therefore unable to elucidate which officers removed their batons (encl. 9a).

§ 87(2)(g)

### **Allegation A- Force: PO Richard Blasetti struck § 87(2)(b) with a baton.**

It is undisputed that § 87(2)(b) was intoxicated and engaged in a physical struggle with officers prior to PO Blasetti striking § 87(2)(b) on his arm with a metal baton. The investigation determined by the preponderance of the evidence that PO Blasetti also struck § 87(2)(b) in the head with his baton.

In his original statement to IAB, § 87(2)(b) alleged that he was struck six times on the back of his head with a baton, all while running away from PO Bauta and PO Blasetti (encl. 10p). In his CCRB statement, § 87(2)(b) confirmed that he was struck in the head with a baton and added that PO Blasetti swung the baton toward his head, but § 87(2)(b) put his arm up to block his face and was subsequently struck in the arm (encl. 10e).

§ 87(2)(b) a friend of § 87(2)(b) observed an officer strike § 87(2)(b) in the head and arms with a baton seven to ten times (encl. 12a). Similarly, § 87(2)(b) § 87(2)(b) who was working as § 87(2)(b) at the time of the incident, observed officers strike § 87(2)(b) with batons five to seven times with at least one strike making contact with § 87(2)(b) head (encl. 13a). § 87(2)(b) another security guard working at the time of the incident, observed an officer strike § 87(2)(b) in the legs with the baton, but not the head (encl. 14a). No civilian witness observed an officer strike § 87(2)(b) with their fists.

PO Blasetti admittedly struck § 87(2)(b) on his arms with the baton, as he was resisting arrest, but PO Blasetti denied ever striking him in the head with the baton (encl. 21c-21d). PO Bauta denied using his baton against § 87(2)(b) but acknowledged punching him in the ear, face, head and body. PO Bauta observed PO Blasetti strike § 87(2)(b) on his legs with the baton, but not his head (encl. 18c).

§ 87(2)(b) personal injury photos depicted abrasions to his outer right elbow, a linear contusion to his right knee, a linear contusion to his right arm, and two lacerations to the back of his head (encl. 10f-10l). One laceration was long and linear and required eight staples, while the other was shorter, of an indeterminable shape and required five staples. Upon reviewing the case file, the New York City Medical Examiner was unable to conclusively determine how the scalp lacerations were sustained, but noted that the right arm and right leg contusions were consistent with impact from a blunt object (encl. 30a-30b).

§ 87(2)(g), § 87(2)(b)

§ 87(2)(b)

PO Bauta readily admitted to striking § 87(2)(b) in the face and head repeatedly, whereas no other civilian or officer made that claim, § 87(2)(g)

Officers must use the minimal amount of force necessary to take into custody a violent or resistant individual. Patrol Guide, Procedure 203-11 (encl. 1a-1b). However, the established case precedent upheld that a baton or nightstick strike to the head constitutes deadly force. NYPD v. Bolusi, OATH Index No. 583/92 (encl. 2a-2p) and Transit Authority v. Thompson, OATH Index No. 587/94 (encl. 3a-3n). As it applies to this case, an officer may use deadly force when they believe the suspect has committed, or is about to commit, a felony involving the imminent use of deadly force against them or another. N.Y. Penal Law, Section 35.30 (encl. 4a-4c).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Both officers were injured during the incident, which was confirmed by the line of duty paperwork. The arrest report indicated that § 87(2)(b) pushed and punched PO Blasetti (encl. 24a-24c); however, in the line of duty paperwork, PO Blasetti attributed his injuries to an unrelated civilian who reportedly interfered with § 87(2)(b) arrest, and PO Bauta attributed his injuries to falling. Though highlighted in their CCRB statements, neither officer reported injuries in their line of duty paperwork that stemmed from being punched or pushed by § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

the officers did not immediately call for back up when the alleged threats were made, no officer drew their firearm, and while the encounter was still relatively stable, PO Blasetti shoved § 87(2)(b) backward, further aggravating the situation.

Team: Pod 7

Investigator:	_____	<u>Diana P. Murray</u>	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date